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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE DIVISION

In re JUNIPER NETWORKS, INC.
 SECURITIES LITIGATION

CASE NO.: C06-04327-JW (PVT)

**NOTICE OF MOTION AND
 MOTION FOR LEAVE TO FILE
 MOTION FOR
 RECONSIDERATION
 (CORRECTION OF SEPTEMBER
 25, 2009 ORDER); MEMORANDUM
 OF POINTS AND AUTHORITIES IN
 SUPPORT THEREOF**

 This Document Relates To:

All Actions

Before: Hon. James Ware
 Date: TBD
 Time: TBD

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT before the Honorable James Ware of the United States District Court for the Northern District of California, San Jose, California, Juniper Networks, Inc. (“Juniper”), Scott Kriens, Pradeep Sindhu, Marcel Gani, Robert M. Calderoni, Kenneth Goldman, William R. Hearst III, Stratton Sclavos, Vinod Khosla, Kenneth Levy and William R. Stensrud (the “Juniper Defendants”) will and hereby do move the Court pursuant to N.D. Cal. Civil Local Rule 7-9 for leave to file a motion to reconsider the September 25, 2009 Order granting Plaintiffs’ Motion for Class Certification (“September 25, 2009 Order”).

This motion is based on this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities, oral argument of counsel, and any other matter that may be submitted at the hearing.

STATEMENT OF ISSUES (Civil L.R. 7-4(a)(3))

Whether the Court should grant leave for reconsideration of its September 25, 2009 Order to correct an erroneous recitation of material fact – *i.e.*, that “the parties” alleged that a May 18, 2006 disclosure was a “partial corrective disclosure” – where the Juniper Defendants did not make such an allegation and reserved their arguments challenging the legal sufficiency of Plaintiffs’ allegations regarding corrective disclosures prior to entry of the Order.

MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF FACTS

On March 3, 2009, Plaintiffs filed a Motion for Class Certification (“Motion”) in this action. In their opposition papers and sur-reply, the Juniper Defendants emphasized that they (and their expert, Lucy Allen) accepted as true Plaintiffs’ allegations that “corrective disclosures” were issued on May 16-19, 2006 (“alleged May 2006 disclosures”) solely for the purposes of the Motion. *See* Juniper Defendants’ Opposition to Plaintiffs’ Motion for Class Certification (Dkt. No. 267) at 1, 2; Juniper Defendants’ Sur-Reply in Opposition to Motion for Class Certification (Dkt. No. 316) at 2 n.1. At oral argument, the Juniper Defendants reiterated this position, noting further that they had filed a Motion for Judgment on the Pleadings which

1 challenged the legal sufficiency of the alleged May 2006 disclosures. *See* September 14, 2009
 2 Hr’g Tr. at 11:14-22 (“[F]or purposes of opposing the motion for class certification, the Juniper
 3 Defendants accepted . . . [Plaintiffs’ allegations regarding the May 2006 corrective disclosures]
 4 as true in order to establish lack of price impact by showing that the alleged misrepresentations
 5 did not result [in] inflation consistent with the Plaintiffs’ allegations of corrective disclosures and
 6 consistent with their allegations of market efficiency.”); *see id.* at 10:11-11:9, 11:23-12:12
 7 (explaining that the Juniper Defendants’ Motion for Judgment on Pleadings will dispose of the
 8 alleged May 2006 disclosures as a matter of law).

9 By its September 25, 2009 Order, the Court granted Plaintiffs’ Motion. *See* September
 10 25, 2009 Order (Dkt. No. 342). The September 25, 2009 Order stated:

11 [I]n-out traders who sold their securities prior to May 18, 2006, *the first date on*
 12 *which the parties allege that partially curative disclosures were disseminated to*
 13 *the public marketplace*, cannot logically prove economic loss based on Juniper’s
 14 alleged misrepresentations. . . .

15 Accordingly, the class shall exclude any person who sold their Juniper
 16 securities *prior to May 18, 2006*.

17 September 25, 2009 Order at 16:15-19 (emphases added).

18 **II. ARGUMENT**

19 In accordance with N.D. Cal. Civil Local Rule 7-9, the Juniper Defendants seek
 20 leave to file a motion for reconsideration to correct an erroneous recitation of material
 21 fact in the September 25, 2009 Order. *See* N.D. Cal. Civil L.R. 7-9 (leave to file motion
 22 for reconsideration is appropriate upon a showing of a “manifest failure by the Court to
 23 consider material facts . . . which were presented to the Court before such interlocutory
 24 order.”). Specifically, the September 25, 2009 Order states that “*the parties allege*” that a
 25 “partially curative” disclosure occurred on May 18, 2006 and on that basis, excludes from
 26 the class purchasers who sold their Juniper securities prior to that date. September 25,
 27 2009 Order at 16:15-17 (emphasis added). This, however, is Plaintiffs’ allegation, not
 28 the Juniper Defendants’ allegation. As the Juniper Defendants made clear in their
 Opposition, Sur-Reply and oral argument regarding the Motion, the Juniper Defendants
 do not concede that the alleged May 2006 disclosures are corrective (or even partially

1 corrective) disclosures for which Plaintiffs can plead loss causation. To the contrary, the
 2 Juniper Defendants explained they had accepted as true *Plaintiffs'* allegations concerning
 3 these disclosures solely for purposes of opposing the Motion and further reserved any
 4 pleading-related arguments for their forthcoming Motion for Judgment on the Pleadings.
 5 *See* Juniper Defendants' Opposition to Plaintiffs' Motion for Class Certification at 1, 2;
 6 Juniper Defendants' Sur-Reply in Opposition to Motion for Class Certification at 2 n.1;
 7 September 14, 2009 Hr'g Tr. at 10:11-12:15.

8 To correct this error, the Juniper Defendants' proposed Motion for Reconsideration
 9 (Correction of September 25, 2009 Order), attached as Exhibit 1 hereto, thus seeks to amend the
 10 September 25, 2009 Order in two limited respects: (i) the revision of "the first date on which *the*
 11 *parties* allege" to "the first date on which *Plaintiffs* allege" on page 16, lines 15-16; and (ii) the
 12 revision of "the class shall exclude any person who sold their Juniper securities prior to *May 18,*
 13 *2006*" to "the class shall exclude any persons who sold their Juniper securities prior to *the first*
 14 *corrective disclosure*" on page 16, lines 20-21.

15 For the foregoing reasons, the Court should grant the Juniper Defendants leave to file the
 16 attached Motion for Reconsideration (Correction of September 25, 2009 Order).

17 Dated: September 28, 2009

WILSON SONSINI GOODRICH & ROSATI
 Professional Corporation

18
 19
 20 By: /s/ Nina F. Locker
 Nina F. Locker

21
 22 Attorneys for Defendants Juniper Networks,
 Inc., Scott Kriens, Pradeep Sindhu, Marcel
 23 Gani, Robert M. Calderoni, Kenneth Goldman,
 William R. Hearst III, Stratton Sclavos, Vinod
 24 Khosla, Kenneth Levy and William R.
 Stensrud

ATTESTATION

I, Joni Ostler, am the ECF user whose identification and password are being used to file THE JUNIPER DEFENDANTS' NOTICE OF MOTION AND MOTION FOR LEAVE TO FILE MOTION FOR RECONSIDERATION (CORRECTION OF SEPTEMBER 25, 2009 ORDER); MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF. In compliance with General Order 45.X.B, I hereby attest that Nina F. Locker has concurred in this filing.

Dated: September 28, 2009

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

By: /s/ Joni Ostler
Joni Ostler

EXHIBIT 1

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*Co-Counsel for Defendant Juniper Networks,
 Inc.*

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE DIVISION

In re JUNIPER NETWORKS, INC.
 SECURITIES LITIGATION

 This Document Relates To:

All Actions

) CASE NO.: C06-04327-JW (PVT)
)
) **NOTICE OF MOTION AND**
) **MOTION FOR**
) **RECONSIDERATION**
) **(CORRECTION OF SEPTEMBER**
) **25, 2009 ORDER); MEMORANDUM**
) **OF POINTS AND AUTHORITIES IN**
) **SUPPORT THEREOF**

)
)
) Before: Hon. James Ware
) Date: November 2, 2009
) Time: 10:00 a.m.
)

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on November 2, 2009 at 10:00 a.m., or as soon thereafter as this matter may be heard, before the Honorable James Ware of the United States District Court for the Northern District of California, San Jose, California, Juniper Networks, Inc. ("Juniper"), Scott Kriens, Pradeep Sindhu, Marcel Gani, Robert M. Calderoni, Kenneth Goldman, William R. Hearst III, Stratton Sclavos, Vinod Khosla, Kenneth Levy and William R. Stensrud (the "Juniper Defendants") will and hereby do move the Court pursuant to Federal Rule of Civil Procedure 54(b) and N.D. Cal. Civil Local Rule 7-9 for an order amending the September 25, 2009 Order granting Plaintiffs' Motion for Class Certification ("September 25, 2009 Order").¹

This motion is based on this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities, oral argument of counsel, and any other matter that may be submitted at the hearing.

STATEMENT OF ISSUES (Civil L.R. 7-4(a)(3))

Whether the Court should amend its September 25, 2009 Order to correct an erroneous recitation of material fact – *i.e.*, that "the parties" alleged that a May 18, 2006 disclosure was a "partial corrective disclosure" – where the Juniper Defendants did not make such an allegation and reserved their arguments challenging the legal sufficiency of Plaintiffs' allegations regarding corrective disclosures prior to entry of the Order.

MEMORANDUM OF POINTS AND AUTHORITIES

This Motion for Reconsideration seeks to correct an erroneous recitation of material fact in the Court's September 25, 2009 Order. Federal Rule of Civil Procedure 54(b) permits a party to move to amend any ruling that has not resulted in a final judgment or order "at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and

¹ This Motion is subject to the Court's grant of leave pursuant to N.D. Cal. Civil Rule 7-9. *See* Mot. for Leave to File Mot. for Reconsideration (Correction of September 25, 2009 Order) (filed concurrently herewith).

liabilities.” Fed. R. Civ. P. 54(b); *see Mullen v. Surtshin*, No. C 03-3676 (RMW) (PR), 2009 WL 734673, at *1 (N.D. Cal. Mar. 18, 2009) (“Where the court’s ruling has not resulted in a final judgment or order, reconsideration of the ruling may be sought under Rule 54(b) of the Federal Rules of Civil Procedure, which provides that any order which does not terminate the action is subject to revision at any time before the entry of judgment.”) “Reconsideration is appropriate if the district court (1) is presented with newly discovered evidence, (2) committed clear error or the initial decision was manifestly unjust, or (3) if there is an intervening change in controlling law.” *Moore v. Thomas*, No. C 06-02105 (SBA) (PR), 2009 WL 2761916, at *23 (N.D. Cal. Aug. 27, 2009) (quoting *School Dist. No. 1J v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993)).

Here, the September 25, 2009 Order contains an erroneous recitation of material fact. In its discussion of “in-out traders,” the Court referred to May 18, 2006 as “the first date on which *the parties allege* that partially curative disclosures were disseminated to the public marketplace” and on that basis, excluded from the class any person who sold their Juniper securities “prior to *May 18, 2006*.” September 25, 2009 Order at 16:15-19 (Dkt. No. 342) (emphases added). This, however, is Plaintiffs’ allegation, not the Juniper Defendants’ allegation. As the Juniper Defendants previously explained, the Juniper Defendants accepted as true Plaintiffs’ allegations regarding corrective disclosures *only* for purposes of opposing Plaintiffs’ Motion for Class Certification. *See* Juniper Defendants’ Opposition to Plaintiffs’ Motion for Class Certification (Dkt. No. 267) at 1, 2; Juniper Defendants’ Sur-Reply in Opposition to Motion for Class Certification (Dkt. No. 316) at 2 n.1; September 14, 2009 Hr’g Tr. at 11:14-22.

Indeed, it is the Juniper Defendants’ position that none of the alleged May 2006 disclosures – including the May 16, 2006 CFRA Report and May 18 *Wall Street Journal* article, which merely referenced the May 16, 2006 CFRA Report – is a “corrective disclosure” for which Plaintiffs may plead loss causation. As indicated at oral argument, the Juniper Defendants have filed a Motion for Judgment on the Pleadings addressing this issue, which is scheduled to be heard on November 2. *See* September 14, 2009 Hr’g Tr. at 10:11-12:15; Mot. for Judgment on Pleadings (Dkt. No. 319). Thus, the September 25,

1 2009 Order's suggestion that "the parties" – *including the Juniper Defendants* – alleged a
2 "partial corrective disclosure" on May 18, 2006 is clearly erroneous.

3 To avoid any potential prejudice arising from the above-mentioned error, the Juniper
4 Defendants therefore request that the September 25, 2009 Order be amended in two narrow
5 respects: (i) the revision of "the first date on which *the parties* allege" to "the first date on which
6 *Plaintiffs* allege" on page 16, lines 15-16; and (ii) the revision of "the class shall exclude any
7 person who sold their Juniper securities prior to *May 18, 2006*" to "the class shall exclude any
8 persons who sold their Juniper securities prior to *the first corrective disclosure*" on page 16, lines
9 20-21.

10 Dated: September 28, 2009

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

11
12
13 By: /s/ Nina F. Locker
Nina F. Locker

14
15 Attorneys for Defendants Juniper Networks,
16 Inc., Scott Kriens, Pradeep Sindhu, Marcel
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19 Khosla, Kenneth Levy and William R.
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ATTESTATION

I, Joni Ostler, am the ECF user whose identification and password are being used to file THE JUNIPER DEFENDANTS' MOTION FOR RECONSIDERATION (CORRECTION OF SEPTEMBER 25, 2009 ORDER). In compliance with General Order 45.X.B, I hereby attest that Nina F. Locker has concurred in this filing.

Dated: September 28, 2009

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

By: /s/ Joni Ostler
Joni Ostler